

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

7

REMARKS

Applicant respectfully submits that entry of this §1.116 Amendment is proper since the amendments above narrow the issues for appeal and merely clarify the subject matter of the claims. Applicant further respectfully submits that such amendments do not raise any new issue requiring a further search and/or consideration by the Examiner. As such, entry of this §1.116 Amendment is earnestly solicited.

Claims 1-24 are pending in the application. This Amendment currently amends claims 1, 3-7, 10-12, 18-20, and 22. No new matter is added to currently amended claims 1, 3-7, 10-12, 18-20, and 22. Claims 1, 3-7, 10-12, 18-20, and 22 are currently amended to merely clarify the subject matter of the claims and in no way narrow the scope of the claims in order to overcome the prior art or for any other statutory purpose of patentability.

Notwithstanding any claim amendments of the present Amendment or those amendments that may be made later during prosecution, Applicant's intent is to encompass equivalents of all claim elements. Reconsideration in view of the foregoing amendments and the foregoing remarks is respectfully requested.

Claims 1-8, 12-17, and 22-24 stand rejected under 35 U.S.C. §102(e) as anticipated by Bot (PTO-892, Ref. U: *Bot Till You Drop*, by Chris Taylor, Time Magazine; hereinafter, Bot). Claims 9-11 and 18-21 stand rejected under 35 U.S.C. §103(a) as unpatentable over Bot in view of U.S. Patent No. 5,873,069 to Reuhl et al. (hereinafter, Reuhl).

These rejections are respectfully traversed in view of the following discussion:

I. THE CLAIMED INVENTION

The claimed invention, as defined in independent claim 1, is directed to a method for conducting electronic commerce that comprises electronically visiting, by a customer interested in shopping for an item, a preselected comparison shopping site (CompShop), and querying about the item and comparative prices thereof, running, by the preselected CompShop, a query on a plurality of electronic stores carrying the item, and asking for a price of the item.

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

8

of electronic stores including at least one smartStore, determining by the at least one smartStore that the query is received from the preselected CompShop, and selectively determining, by the smartStore, an offer price of the item and selectively returning one of a static price and a modified price, the modified price resulting from the smartStore learning a best offer price received by the preselected CompShop from the plurality of electronic stores.

The claimed invention, as defined in independent claim 22, is directed to a system for conducting electronic commerce between a customer and one of a plurality of electronic stores that comprises a plurality of electronic stores, a preselected comparison shopping site coupled to the plurality of electronic stores and a customer interested in purchasing an item, in which at least one of the plurality of electronic stores comprises a smartStore that recognizes a query from the preselected comparison shopping site, and an electronic medium for linking the smartStore, each of the plurality of electronic stores, and the preselected comparison shopping site together electronically, in which the preselected comparison shopping site runs the query to the plurality of electronic stores and requests an offer price of the item, and in which the smartStore determines a predetermined offer price of the item from the plurality of electronic stores and selectively returns one of a static price and a modified price, the modified price resulting from the smartStore learning a lowest offer price received by the preselected comparison shopping site from all of the plurality of electronic stores.

The claimed invention, as defined in independent claim 23, is directed to a system for performing electronic commerce that comprises a preselected comparison shopping site (CompShop), means for electronically visiting, by a customer interested in shopping for an item, the preselected CompShop, and inquiring about the item and comparative prices thereof, means for running, by the preselected CompShop, a query on a plurality of electronic stores, asking for a price of the item, and means for determining, by at least one of the plurality of electronic stores that recognizes the query from the preselected CompShop, an offer price of the item and returning one of a static price and a modified price, the modified price resulting from the at least one of the plurality of electronic stores that recognizes a query from the preselected CompShop learning a lowest offer price received by the preselected CompShop from the plurality of

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

9

electronic stores.

The claimed invention, as defined in independent claim 24, is directed to a tangible medium tangibly embodying a program of machine-readable instructions executable by a digital processing apparatus to perform a method of conducting electronic commerce. The method comprising electronically visiting, by a customer interested in shopping for an item, a preselected comparison shopping site (CompShop), and inquiring about the item and comparing prices thereof, running, by the preselected CompShop, a query on a plurality of electronic stores asking for a price of the item, and determining, by at least one of the plurality of electronic stores that recognizes the query from the preselected CompShop, an offer price of the item as one of a static price and a modified price, the modified price resulting from the analysis of one of the plurality of electronic stores that recognizes the query from the preselected CompShop, learning a lowest offer price received by the preselected CompShop from the plurality of electronic stores.

An aspect of the claimed invention provides that if the customer has accessed the preselected CompShop, then a smartShop, which recognizes the price query as originating from the preselected CompShop, may determine that a modified price based on competitive prices and a profit margin is necessary. If the customer has not accessed the preselected CompShop, the smartShop will return a static, i.e., standard price.

The above operation can be compared to the traditional model of "coupon cutting" or "mail in rebates." Stores, i.e., those stores which are analogous to the smartStore, usually give a special price to customers who bring in coupons, where the coupon represents "shopping" through a medium, for example, a newspaper in which the store has advertised. Bringing in the newspaper coupon is analogous to accessing the preselected CompShop of the invention. However, the stores rely on the fact that there will be many customers who do not use coupons or who will forget to turn in the mail-in rebates. (Please see, Specification, pages 19-22).

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

10

II. THE PRIOR ART REJECTIONS

A. The Bot Reference

Bot discloses that shopping agents, or bots, have the purpose of searching the Web to compare all the prices one may pay for the same item (Bot, paragraph 4). Bot also discloses that when a third generation of shopping agents move out of the lab, a complex trade between a pricing bot acting for the selling site and a shopping bot acting for the customer will result in dynamic pricing (Bot, paragraph 10).

In the future, Bot further discloses that an expert predicts every seller will be like an airline constantly changing pricing and the ability to negotiate, i.e., auto haggling (Bot, paragraph 11). Bot also discloses that price bots don't understand that undercutting your competitor is not always smart (Bot, paragraph 12). "This gives rise to price wars," says Kephart in tests watched the sell bots give the store away in a competitive frenzy (Bot, paragraph 13).

Claim 1 recites at least the features of "determining by the at least one electronic store that the query is received from the preselected CompShop; and selectively determining the best offer price of the item and selectively returning one of a static price and a modified price, the modified price resulting from the smartStore learning a best offer price received by the preselected CompShop from the plurality of electronic stores."

Similarly, claim 22 recites at least the features of "wherein at least one of the plurality of electronic stores comprises a smartStore that recognizes a query from the preselected comparison shopping site ... wherein the smartStore determines a predetermined offer price of the item from the plurality of electronic stores and selectively returns one of a static price and a modified price, the modified price resulting from the smartStore learning a lowest offer price received by the preselected comparison shopping site."

Similarly, claim 23 recites at least the features of "means for determining by at least one of the plurality of electronic stores that recognizes the query from the preselected CompShop, an offer price of the item and returning one of a static price and a modified price, the modified price resulting from the at least one of the plurality of electronic stores that recognizes the query from the preselected CompShop."

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

11

Similarly, claim 24 recites at least the feature of "determining, by at least one of the plurality of electronic stores that recognizes the query from the preselected CompShop, an offer price of the item and returning one of a static price and a modified price, the modified price resulting from the at least one of the plurality of electronic stores that recognizes the query from the preselected CompShop."

The Bot reference describes comparison shopping agents that use competitive prices for a seller-side auction, where they compete with each other by creating a price war. There is no recognition between a particular shopping agent, allegedly corresponding to the CompShop of the invention, and a particular electronic store, i.e., the smartStore of the invention.

In contrast, the smartStore of the claimed invention recognizes the presence of a CompShop and changes its behavior accordingly. If the smartShop receives a query from a comparison shopping site that is not preselected, it returns the static or standard price. If, on the other hand, the smartShop receives a query from the preselected CompShop, then after receiving the competitors' prices from the preselected CompShop, the smartShop may modify the offer price, if necessary, to achieve a lowest price, but will not modify the offer price if doing so lowers the price below a predetermined price. The customer is not aware of the smartStore's possible modification of price.

The claimed invention, in fact, solves the problem of "price bots don't understand that undercutting your competitor is not always smart" described by the Bot reference. The smartStore of the claimed invention offers either (1) the static price, (a) if the customer does not obtain its price information through the preselected CompShop, or (b) if the customer obtains his price information through the preselected CompShop but the smartStore needs to offer a modified price to meet a competitor's price, or (2) the modified price, if the customer obtains his price information through the preselected CompShop and competition requires the smartStore to offer the modified price. Whereas, the sell bots of Bot always return a lower price to undercut the competition; thus, leading to the ruinous price wars described by Bot.

Nowhere does Bot disclose, teach or suggest the feature of "determining, by at least one smartStore that the query is received from the preselected CompShop; and selectively

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

12

determining, by the smartStore, an offer price of the item and selectively returning one of a static price and a modified price, the modified price resulting from the smartStore learning a best offer price received by the preselected CompShop from the plurality of electronic stores as recited in claim 1 and similarly recited in claims 22-24.

For at least the reasons outlined above, Applicant respectfully submits that it does not disclose, teach or suggest every feature of claims 1 and 22-24. Accordingly, Bot does not anticipate, or render obvious, the subject matter of claims 1 and claims 2-21, which depend from claim 1, and claims 22-24. Withdrawal of the rejection of claims 1-8, 12-17, and 24 as anticipated by Bot under 35 U.S.C. §102(e) is respectfully solicited.

B. The Reuhl Reference

Reuhl, as described by claim 9, discloses "An enterprise-wide integrated computer system for storing, processing and reporting pricing information regarding a plurality of products sold [by] a plurality of stores in a plurality of markets." Reuhl also discloses "said pricing program comprising ... means for changing pricing data at predetermined intervals on the basis of a price change frequency pattern, said means for changing price data including means for capturing, modifying and processing said pricing data to provide updated pricing data according to predetermined rules ... said predetermined rules including creation of a cent code by changing an ending cent in said new active price in accordance with a cent code corresponding to a profit margin of the product."

Reuhl also describes an automated system that provides a buyer at the point of sale with price comparisons among competitors to ascertain the best price available for a product or a substantially similar product (col. 3, lines 8-11).

Claim 1 recites at least the features of "determining by the at least one smartStore that the query is received from the preselected CompShop; and selectively determining by the smartStore, an offer price of the item and selectively returning one of a static price and a modified price, the modified price resulting from the smartStore learning a best offer price received by the preselected CompShop from the plurality of electronic stores."

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

13

Ruehl does not cure the deficiencies of Bot. Ruehl discloses an enterprise-wide integrated computer system for storing, processing and reporting pricing information regarding a plurality of products that may provide a buyer at the point of sale with price comparisons among competitors to ascertain the best price available for a product. Ruehl, in effect, discloses a two-way interactive system between seller, i.e., the enterprise-wide integrated computer system, and the customer, and lacks an interactive entity analogous to the preselected CompShop of the claimed invention. Thus, Ruehl lacks the interaction of the claimed invention in which the preselected CompShop may supply a modified price from the smartShop, which recognizes the preselected CompShop, to a customer, who has accessed the preselected CompShop.

In addition, Ruehl's system changes pricing data at predetermined intervals on the basis of a price change frequency pattern and not in response to a request for pricing data requested by a customer to a preselected CompShop. Ruehl's system is not interactive between the entities of customer, preselected CompShop, and smartStore.

Therefore, nowhere does Ruehl teach or suggest the features of "determining by the at least one smartStore that the query is received from the preselected CompShop and selectively determining, by the smartStore, an offer price of the item and selectively returning one of a static price and a modified price, the modified price resulting from the smartStore least a best offer price received by the preselected CompShop from the plurality of electronic stores" as recited in claim 1.

For at least the reasons outlined above, Applicant respectfully submits that Bot and Ruehl, either individually or in combination, do not disclose, teach or suggest a feature of claim 1. Accordingly, Bot and Ruehl, either individually or in combination, fail to meet the obviousness requirements of the subject matter of claim 1 and claims 9-11 and 18-21, which depend on claim 1, under 35 U.S.C. §103(a). Withdrawal of the rejection of claims 9-11 and 18-21 under 35 U.S.C. §103(a) as unpatentable over Bot in view of Ruehl is respectfully solicited.

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

14

III. FORMAL MATTERS AND CONCLUSION

Applicant respectfully submits that formal drawings were filed with the Examiner on December 29, 2000. However, as a convenience to the Examiner, these formal drawings are resubmitted for consideration by the Examiner in the attachment to this Amendment.

In view of the foregoing, Applicant submits that claims 1-20, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

Serial No. 09/676,529
Docket No. AM9-99-0149
ALM.025

15

The Commissioner is hereby authorized to charge any deficiency in fees and credit any overpayment in fees to Assignee's Deposit Account No. 09-0441.

Respectfully Submitted,

Date: 12/30/03

Peter A. Balnave
Peter A. Balnave, Reg. No. 46,199

McGinn & Gibb, PLLC
8321 Old Courthouse Road
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that I am filing this Amendment by facsimile with the United States Patent and Trademark Office to Examiner Matthew S. Gart, Group Art Unit 3600, Official Facsimile Number (703) 872-9306 this 30th day of December, 2003.

Peter A. Balnave
Peter A. Balnave
Reg. No. 46,199